

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES EASLER,
MICHELLE STONE-EASLER, and
INSURANCE COMPANY OF
STATE OF PENNSYLVANIA,

Plaintiffs,

v.

Civil Action No. 1: 10-cv-11989 RGS

DELTA AIR LINES, INC.,
FREEDOM AIRLINES, INC.,
MESA GROUP, INC., and
COMAIR, INC.,

Defendants.

JOINT MOTION TO EXTEND DISCOVERY DEADLINES

The parties to this personal injury and subrogation action¹ respectfully request that the Court extend the discovery deadlines previously set by its Electronic Order, dated June 7, 2011.² Initial discovery deadlines were set at the December 22, 2010 LR 16.1(D) scheduling conference, which was attended only by counsel for Plaintiff Insurance Company of State of Pennsylvania (ICSP) and counsel for Defendant Delta Air Lines, Inc. (Delta), the original parties to this action. Subsequently, additional parties were added to the case.

In March 2010, ICSP's subrogor, James Easler (Easler), and his wife moved to intervene as plaintiffs. (Dkt. 9) The Easlers and ICSP also impleaded Freedom Air Lines,

¹ Plaintiff ICSP filed this subrogation case in a Massachusetts state court and Delta promptly removed the case pursuant to 28 U.S.C. § 1441 *et seq.* and LR 81.1. (Dkt. 1)

² The Court ordered the following schedule: Written discovery completed by October 3, 2011; fact depositions completed by December 2, 2011; plaintiffs' expert reports by January 4, 2012; defendants' expert reports by February 1, 2012; all expert depositions completed by February 29, 2012; and any summary judgment motions filed by March 30, 2012, with oppositions filed by April 23, 2012.

Inc. (Freedom) and Mesa Air Group, Inc. (Mesa). (Dkt. 13) Easler later impleaded Comair, Inc. (Comair). (Dkt. 17)

Discovery informally was stayed pending the appearance of additional defendants Freedom, Mesa, and Comair. Freedom and Mesa filed their responsive pleadings on May 31, 2011 and June 23, 2011. (Dkt. 25, 33) Comair filed its responsive pleading in June 2011. (Dkt. 30) Freedom and Comair asserted cross-claims against each other and answered those cross-claims in June and July 2011. (Dkt. 34, 35)

The parties have been working to complete the discovery necessitated by the addition of these parties, along with the involvement of several important non-parties, including the Massachusetts Port Authority (Massport), the Transportation Security Administration (TSA), and the physicians and employer of Plaintiff James Easler. To date, thousands of pages of documents have been produced by the parties pursuant to document requests and seven depositions have been conducted. Deposition testimony has identified additional relevant and responsive documents and the parties are working to locate and produce these recently identified materials.

The parties also have served subpoenas on several non-parties, including Massport, American Sweeping Co. (Mr. Easler's employer), and Embraer, the current owner of the aircraft. Massport has produced several hundred pages of documents, and has supplemented its response to the subpoena several times. Several Massport documents also were designated as Sensitive Security Information (SSI) and required review by a TSA attorney and inspection by the parties at Massport's office. American Sweeping continues to search for employment manuals and training materials, and

Embraer has not yet responded to the subpoena requesting production of the aircraft logbook, which contains the maintenance records for the aircraft at issue in this case.

The parties expect to conduct approximately eight additional depositions, including those of the individual Plaintiffs, several non-party witnesses, and Rule 30(b)(6) witnesses from Comair and Freedom. Plaintiff James Easler's independent medical examination has been delayed, in large part, because of the difficulty in obtaining a complete set of medical records from his numerous providers, which includes medical records from a previous workers compensation claim that required several surgeries. The Easlers' depositions, noticed for November 30, 2011, likely will need to be adjourned pending completion of the medical examination of James Easler and also due to recent scheduling conflicts that have arisen among counsel.

The depositions of the corporate representatives may require travel out of state to their respective corporate headquarters in Cincinnati and Phoenix. Comair also has indicated its intent to depose a former employee of Freedom, who resides in Pittsburgh. Counsel continue to work in good faith to schedule mutually convenient dates, which has been complicated because of counsels' trials and mediations in other cases and the fact that several relevant non-party witnesses, particularly former employees, could not be located readily.

The parties have cooperated on discovery issues and resolved most disputes without resort to motion practice, and plan to continue to do so. Additionally, the parties jointly agree that an extension of the discovery schedule will provide the time necessary to produce outstanding documents, complete depositions, and conduct a pre-trial mediation. The parties propose that the Court extend the deadlines as follows:

1. fact depositions completed by February 1, 2012;
2. Plaintiffs' expert witnesses designated and Rule 26 reports served by March 14, 2012;
3. Defendants' expert witnesses designated and Rule 26 reports served by April 18, 2012;
4. all expert depositions completed by May 23, 2012;
5. any summary judgment motions filed by June 20, 2012, and oppositions filed by July 18, 2012.

The parties currently do not anticipate the need for additional extensions beyond this time period.

Dated: November 9, 2011

Respectfully submitted,

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